(1)

No. 90-1950

Supreme Court, U.S.
FILED
JUN 24 1991
OFFICE OF THE CLERK

UNITED STATES SUPREME COURT
October Term, 1990

T. CARLTON RICHARDSON,

Petitioner,

vs.

ROOSEVELT JONES, ET AL.

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

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QUESTIONS FOR REVIEW

(1) Are the due process rights under the 14th Amendment of the Federal Constitution of an alleged offender under Rule 11 of the Federal Rules of Civil Procedure violated if a hearing is not accorded prior to imposition of sanctions where there are genuine issues of material fact in dispute as to the legal and factual sufficiency of the offending pleading, where there was a finding of an "improper purpose" in commencement of the action, or where a money sanction is contemplated by the Federal district court?

(2) Where a Federal district court in awarding sanctions under Rule 11 of the Federal Civil Rules of Procedures made no findings of facts or conclusions of law as to the factual and legal sufficiency of a complaint declared "manifestly frivolous and malicious" does this consitute an

abuse of discretion or violate the procedural due process rights of the offender under the 14th Amendment to the Federal Constitution?

(3) Where a Federal district court merges dismissal on the merits of a suit with an award of Rule 11 sanctions in the same order, must the order be bifurcated for appeal purposes if the court orders further proceedings to determine an amount of sanctions?

(4) Where a Federal court of appeals summarily affirms a district court decision awarding sanctions under Rule 11 of the Federal Rules of Civil Procedure sua sponte without prior notice or opportunity to be heard, are the procedural due process rights of the offender under the 14th Amendment of the Federal Constitution violated or does this constitute an abuse of discretion?

PARTIES TO ACTION

The parties to the proceedings in the United States District Court for the District of Columbia were:

Plaintiff:

T. Carlton Richardson

Defendants:

1. Roosevelt Jones, Individually, and as Personal Representative of the Estate of Leula King, Deceased;

2. Perry L. Jones;

3. Hon. F. Dennis Alvarez, Judge Hillsborough County Circuit Court, Probate Division;

4. Second District Court of Appeals;

5. Supreme Court of Florida;

6. Charles R. Wilson; and

7. Kennan G. Dandar.

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OPINIONS INVOLVED BELOW

1. Order, Richardson v. Jones, et al., C.A. No. 89-2694 (D.C.D.C., Harris, J., January 31, 1990;

2. Order, Richardson v. Jones, et al. , C.A. No. 89-2694 (D.C.D.C., Harris, J., March 8, 1990);

3. Order, Richardson v. Jones, et al., No. 90-7049 (D.C. Cir., January 11, 1991); and

4. Order, Richardson v. Jones, et al., No. 90-749 (D.C. Cir., March 28, 1991).

JURISDICTIONAL STATEMENT

1. The order dismissing in part and sua sponte summarily affirming the remainder of the appeal in Richardson vs. Jones, et al, No. 90-7049, United States Court of Appeals, District of Columbia Circuit was entered on January 11, 1991.

2. The petition for rehearing in said appeal was denied on March 28, 1991.

3. The statutory basis of the this

Court's jurisdiction is 28 U.S.C. Sec. 1254(1).

PROVISIONS INVOLVED:
CONSTITUTION, STATUTE OR REGULATION

Relevant portions of the following: (1) 14th Amendment, U.S. Constitution, (2) F.R.Civ.P. 11 and (3) F.R.Civ.P. 12 are set forth in the Appendix.

STATEMENT OF CASE

Petitioner [or "plaintiff"], a sole practitioner who resides and practices in the District of Columbia, filed a pro se complaint in the Federal District Court for the District of Columbia Circuit in September, 1989, for declaratory, injunctive and other relief naming as defendants, who were all residents of Florida, his former clients, a husband and wife, an estate under administration in the Probate Division of the Circuit Court of Hillsborough County, Florida, [or "probate court"] in which the husband was personal representative, their successor attorneys, and the judicial department of the State of Florida (the presiding circuit court judge, an intermediate court of appeals, and the Supreme Court). See, Exhibit "F": Complaint (exhibits omitted), annexed. The gravamen of the complaint sought a declaration that the entry of a personal judgment against the plaintiff by

the probate court ultra vires under certain Federal civil rights statutes and the Constitution and therefore unenforceable against the plaintiff in Florida, the District of Columbia, or elsewhere. On October 12, 1989, the judicial defendants served a motion to dismiss for lack of personal jurisdiction, lack of subject matter jurisdiction claiming this was an attempt to review a state court judgment, and failure to state a claim upon which relief could be granted claiming judicial immunity under common law principles and the 11th Amendment to the Federal Constitution. A similar motion to dismiss was served by the non-judicial defendants on October 26, 1989, and claimed, in addition to the grounds stated by the judicial defendants, that the claim is barred under the doctrines of res judicata, collateral estoppel, and abstention. The judicial defendants' motion to dismiss was opposed by the plaintiff on October 25, 1989. On

or about November 9, 1989, the plaintiff served an opposition to the non-judicial defendants' motion to dismiss and a cross-motion for partial judgment on the pleadings or partial injunctive relief. Thereafter, the non-judicial defendants on November 15th, 1989 served their motion for sanctions under F.R.Civ.P. 11 [or "Rule 11"]. An opposition to this motion for sanctions was served by the plaintiff, along with a cross-motion for sanctions, on December 7th, 1989. On January 31, 1990, without oral argument or an evidentiary hearing, the Federal district court entered its order dismissing the complaint, awarding sanctions, and denying all cross-motions of the plaintiff, ruling:

> "ORDERED, that defendants' motions to dismiss are granted. Furthermore, the Court having found that the complaint is both manifestly frivolous and malicious, it hereby further is
>
> "ORDERED, that defendants' motion for sanctions is granted. Defendants shall within 14 days of the date of this Order submit their request as to the

> amount of sanctions to be imposed against plaintiff. Plaintiff shall have 14 days thereafter in which to respond to defendants' request." (Emphasis Supplied)

See, Exhibit "A": Order (Harris, J., 1/31/90) The non-judicial defendants served a "Request for Sanctions" accompanied by an affidavit by its local counsel, John J. Sellinger, Esq., and its Florida counsel, who was also a defendant, Kennan George Dandar, on February 14, 1990 requesting attorney fees and costs of $3,775.50 (Thirty-Seven Hundred Seventy-Five and 50/100 Dollars). See, Exhibit "G": Request for Sanctions and Exhibit "H", Defendants' Motion for Sanctions. Thereafter, in February, 1990, the plaintiff served its motion for reconsideration of the dismissal, opposition to the sanctions, and request for oral argument. By order dated March 8, 1990, the district court again without oral argument or an evidentiary hearing denied plaintiff's motion for reconsideration and directed

that "plaintiff shall pay attorney fees in the amount of $3,775.50 to defendants.." See, Exhibit "B": Order (Harris, J., 3/8/90)

Plaintiff noted an appeal from the March 8, 1990 order denying reconsideration of the January 31, 1990 order granting dismissal and the non-judicial defendants' motion for sanctions on April 6th, 1990. In April, 1990, the defendants filed a motion to dismiss the appeal on grounds that the 30-day appeal period had run from the entry of the Jaunary 31, 1990 order, and not the March 8, 1990 order. An opposition to this motion to dismiss was filed by the plaintiff and later, the plaintiff filed a motion for summary reversal. The court of appeals dismissed the appeal in part as to the dismissal portion of the January 31, 1990 order because this was a decision on the merits even though the amount of the Rule 11 sanctions remained to be determined citing

Budinich v. Becton Dickinson & Co., 486 U.S. 196 (1988) and refused to consider the motion for summary reveral in light of the dismissal of the appeal. See, Exhibit "C": Order, Court of Appeals, D.C. Circuit (1/11/91) annexed. The appeals court sua sponte summarily affirmed the grant of sanctions stating that, "(t)he district court did not abuse its discretion in denying reconsideration and setting the amount of attorneys fee as a sanction." Id. On petition for rehearing by plaintiff, the court of appeals refused, denying the petition. See, Exhibit "D": Order, Court of Appeals, D.C. Circuit (3/28/91). This petition for writ of certiorari is being brought to review the federal court's dismissal and award of sanctions.

Basis for Federal Jurisdiction

Federal jurisidiction lies in 28 U.S.C. Sec. 1331 (Federal Question), Sec. 1332 (Diversity of Citizenship) and Sec. 1343(3) (Civil Rights).

REASONS FOR GRANTING WRIT

Preface

Petitioner [or "plaintiff"], an attorney, commenced pro se a lawsuit in the Federal District Court for the District of Columbia Circuit [or "district court"]. On motions for dismissal by the defendants ["respondents" herein] and for sanctions under Federal Rule of Civil Procedure 11 [or "Rule 11"], the district court consolidated its consideration and entered an order without conducting a hearing for evidentiary purposes or oral argument on the motion to dismiss nor the circumstances surrounding the filing of the complaint or the financial condition of the plaintiff, granting dismissal and Rule 11 sanctions. Both determinations went to the merits of the controversy between the parties, i.e. the factual and legal sufficiency of the complaint or the failure to state a cause upon which relief could be granted. Its order was short and

sweet, consisting of no more that 16 lines, holding that, "the complaint is both manifestly frivolous and malicious."

On appeal to the Federal Court of Appeals for the District of Columbia Circuit [or "appeals court"], it dismissed the portion of the appeal regarding the motion to dismiss as untimely since the notice of appeal was filed after the district court had resolved, without hearing, the amount of the sanctions which was left open in its initial order dismissing the case and awarding sanctions. The appeals court also, sua sponte, without prior notice, summarily affirmed the award of sanctions stating that the district court did not abuse its discretion.

This petition for writ of certiorari seeks review of that ruling for the reasons (1) that there exist conflict among the circuits as to the due process required when Rule 11 sanctions are

awarded and with prononcements of this Court in similar situations, (2) that the federal courts need guidance on the issue of whether an abuse of discretion or denial of due process occurs in Rule 11 proceedings if a district court fails to make appropriate findings on the legal and factual sufficiency of the offending pleading, (3) that an appeals court violates due process if no prior notice is given for a sua sponte summary affirmance of an appeal, (4) that Rule 11 sanctions, when integrated with a Rule 12(b)(6) dismissal motion, should not be bifurcated on appeal since it increases the number of appeals in a case and the issues underlying factual and legal determinations under both Rules go to the merits of every case, (5) that there is inconsistency among the Federal Civil Rules governing summary dispositions (i.e. Rule 12 dismissal motions, Rule 56 summary judgment motions and Rule 11 sanction

motions) on the trial court's role in factual determinations requiring this Court's supervisory authority to bring uniformity, and (6) that there is inconsistency between the ruling in this case and the expressed purpose of Rule 11 as a deterrance, as opposed to a compensatory measure.

I. DUE PROCESS UNDER RULE 11

A. Rule 11 Generally. Two grounds for imposing Rule 11 sanctions are frivolousness, based on a determination that the party or attorney did not make a reasonable inquiry into the law, or improper purpose. Under Rule 11, the standard for imposing sanctions is an objective determination of whether the offender's conduct was reasonable under the circumstances. Brown v. Federation of State Med. Bds. 830 F.2d 1429 (7th Cir., 1987) [collecting cases.] "Determining whether an attorney has violated Rule 11 involves a consideration of three types of issues.

The court must consider factual questions regarding the nature of the attorney's prefiling inquiry and the factual basis of the pleading or other paper. Legal issues are raised in considering whether a pleading is 'warranted by existing law or a good faith argument' for changing the law and whether the attorney's conduct violated Rule 11. Finally, the district court must exercise its discretion to tailor an 'appropriate sanction'." Cotter & Gell v. Hartmax Corp., 110 S.Ct. 2447, 2457 (1990). "A court of appeals would be justified in concluding that a district court had abused its discretion in making a factual finding only if the finding were clearly erroneous". Id. at 2458

Rule 11 "requires a court to consider issues rooted in factual determinations." Id. at 2459. For example,

> "to determine whether an attorney's prefiling inquiry was reasonable, a court must consider all the circumstances of a case. ***In con-

> sidering whether a complaint was supported by fact and law 'to the best of signer's knowledge, information, and belief', a court must make some assessment of the signer's credibility. Issues involving credibility are normally considered factual matters. [citing cases]." Id., at 2459 [Emphasis Supplied]

A district court abuses its discretion if it has relied on a "materially incorrect view of the relevant law in determining that a pleading was not 'warranted by existing law or a good faith argument' for changing the law", or "if a district court's findings rest on an erroneous view of the law", or that the factual findings of the district court were incorrect. Id.

B. Hearing Requirement. This Court has consistently held since Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 168 (1951) that:

> "some form of hearing is required before an individual is finally deprived of a property interest...The 'right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal

> conviction is a principle basic to our society.'"

Sanctions imposed under the Federal Rules of Civil Procedure are not immune from this requirement. The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner". Armstrong v. Manzo, 80 U.S. 545, 552 (1965). "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process clause of the Fifth or Fourteenth Amendment". Mathews v. Eldridge, 424 U.S. 319 (1976) In carrying out their adjudicatory function within our federal system, the district courts must administer the decision-making process. The Federal Rules of Civil Procedure, like any legislative enactment, executive order or agency regulation, must comport with due process.

Under what circumstances is a hearing required in Rule 11 cases. Various fed-

eral appeals court which have considered the issue have employed a balancing test:

> "The more serious the possible sanction both in absolute size and in relation to actual expenditures, the more process will be due."

Donaldson v. Clark, 819 F.2d 1151, 1561 (11th Cir., 1987). Some have placed great reliance upon the Advisory Committee Note to Rule 11, which

> "indicates that satellite litigation over sanctions and separate hearings should be limited to the extent possible. '[T]he court must to the the extent possible limit the scope of the sanction proceedings to the record." [Emphasis supplied.]

See, In re Kunstler, 914 F.2d 505, 521 (4th Cir., 1990). And have held that

> "[d]ue process does not require an evidentiary hearing before sanctions are imposed, even when sanctions are imposed in part under the improper purpose prong of Rule 11." [Emphasis supplied] Id.

However, other appeals courts have held that a hearing should be held where sanctions are based on the signer's bad

faith. See, e.g. Rodgers v. Lincoln Towing Serv., 771 F.2d 194, 205-06 (7th Cir., 1985); INVST Fin. Grp. Inc. v. Chem-Nuclear Sys., 815 F.2d 391, 405 (6th Cir., 1987), cert den, 108 S.Ct. 291 (1987); Brown v. Nat'l Bd. of Med. Examiners, 800 F.2d 168, 173 (7th Cir., 1986); and Donaldson, supra, where the court stated:

> "..when a court is asked to resolve an issue of credibility or to determine whether a good faith argument can be made for the legal position taken, the risk of an erroneous imposition of sanctions under limited procedures and the probable value of additional hearing are likely to be greater." at 1561 [Emphasis supplied.]

See also, Joseph, Sanctions 294 (1989) The various circuit courts seems to put great weight on whether there was an "adequate opportunity to contest the court's determinations." See, Kunstler at 522. There is an underlying presumption in each appeals case that a hearing was conducted by the district court at some point in the proceedings, if not specifically on the

sanctions issue. Even the Advisory Committee's notes suggest that the "judge's participation in the proceedings" [emphasis supplied] does not necessitate a separate hearing. In Kunstler the district court heard oral argument on motions to dismiss and for summary judgment. However, this Court in the McGrath case, states that "some form of hearing is required before an individual is finally deprived of a property interest". [Emphasis supplied.] The question then is whether an offender under Rule 11 will be deprived of a "property interest"? If the offender is required to pay a monetary sanction, that's depriving the offender of a property interest. If the offender is an attorney and subject to discipline by the district court as well the jurisdictions in which the attorney is licensed, the Rule 11 sanctions may form the basis of disciplinary proceedings which would impact adversely upon the attorney's

ability to practice since discipline can range from reprimand, suspension, to disbarment:

> "Due to the impact sanctions may have on a party or an attorney's career and personal well-being, sanctions should not be lightly imposed." Brown, 830 Fed. 2d at 1437.

Thus, imposition of Rule 11 sanctions upon an attorney constitutes, in part, the loss of future business advantages and impairs the attorney's ability to practice and the impairment or loss impacts upon a property interest since the license to practice law has been long held by this Court to be a property interest protected by the Due Process Clause of the 14th Amendment of the Constitution. See, Leis v. Flynt, 439 U.S. 438 (1979).

Federal appeals courts seem to agree that if monetary sanctions are imposed then a hearing should be held on the sanctions themselves, apart from the regular proceedings, especially where the monetary sanctions are large. See,

Kunstler, at 522. It has been held that in awarding a reasonable attorney's fee under Rule 11, a district court should make some inquiry concerning an attorney's ability to pay a monetary sanction:

> "(I)n appropriate cases, a district court should reflect upon equitable considerations in determining the amount of the sanction. *** One equitable consideration...is the sanctioned attorney's (or party's) assets. (citing cases)...A duty of mitigation exists...Other equitable factors may include the experience of the lawyer, and whether the area of law was one that required special expertise." Brown, 830 F.2d at 1439.

Failure to consider ability to pay is, however, an abuse of discretion. Jackson v. Law Firm of O'Hara, Ruberg, et al., 875 F.2d 1224, 1230 (6th Cir., 1989). Accord, Kunstler at 523:

> "The determination of the type or amount of the sanction imposed comes only after the offending party has had an opportunity to defend against the imposition of any sanction."

Where district courts have used Rule 11 to

shift fees and compensate the injured party rather than to deter improper litigation, the monetary sanctions have been vacated. Kunstler, at 522. In re TCI, Ltd., 769 F.2d 441 (7th Cir., 1985); Brown 830 F.2d at 1440. Accord, Jackson:

> "(i)n common with other courts, we have held that 'a reasonable fee does not necessarily mean actual legal expenses incurred.'" at 1229

and Kunstler:

> "..a monetary sanction should never be based solely on the amount of attorney's fees claimed by the injured party, even where a court determines that the amount of the sanction should equal the fees claimed by the injured party." at 523

See also, INVST, supra, 815 F2d at 404. Stewart v. American Int'l Oil & Gas Co., 845 F.2d 196, 201-02 (9th Cir., 1988); Thomas v. Capital Security Services, Inc., 836 F.2d 866, 878-79 (5th Cir., 1988). As previously stated, McGrath stands for the principle that the right to a hearing is unrelated to the amount of

the sanction, the only question being is there a deprivation of a "property interest". This Court has never based the due process rights of a litigant on the amount involved or the status of the individuals.

In this case, the district court had before it motions to dismiss under F.R.Civ.P. 12(b)(6) and for Rule 11 sanctions which it consolidated and entered an order dismissing the case and awarding sanctions, then allowing 14 days for the offender to respond to the request for sanctions by the injured defendants. There was no participation by the district court in the proceedings save for its in camera consideration of the complaint and dispositive motions. An award of the exact amount of the legal expenses incurred by the defendants was made by the district court. Its action in failing to conduct any hearing whatsoever in the proceedings and awarding the exact amount

of legal fees and costs incurred by the injured defendants denied the petitioner's due process rights as the offending party and is contrary to the decisions of this Court and other circuits. Sanctions under the Federal Rules are not immune from the Constitutional requirement of according a hearing and fair opportunity to be heard where there is involved the deprivation of a proprietary right, e.g. money or a license to practice law. The Writ should issue less this Court allow this blatant violation.

C. Findings in Sanctions Order Required. There is no expressed requirement in the Federal Rules of Civil Procedure that the sanctioning court make findings of fact or conclusions of law. F.R.Civ.R. 52(a) provides, inter alia:

> " *** Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)."

On one occasion this Court has suggested that the requirement of findings is a feature of due process. In Panama Refining Co. v. Ryan, 293 U.S. 388, 432 (1935), this Court stated:

> "If the citizen is to be punished for the crime of violating a legislative order of an executive officer, or of a board or commission, due process of law requires that it shall appear that the order is within the authority of the officer, board, or commission, and if that authority depends on determinations of fact, those determinations must be shown." [Emphasis supplied.]

The policy underlying Rule 11 is that of "deterrance":

> "(I)t is clear that the primary, or "first" purpose of Rule 11 is to deter future litigation abuse." Kunstler at 522 (citing cases)

Since punishment is the principle purpose of this Rule, if the offending pleading lacked factual or legal sufficiency or was filed for an improper purpose, the district court is compelled to impose sanctions. This Court in Cooter & Gell stated

that "the rule requires a court to consider issues rooted in factual determinations." at 2459. Thus for the imposition of sanctions under Rule 11, the district court must make factual determinations. Since the authority to impose sanctions are derived from Rule 11 which requires factual determinations, the failure to make those determinations violates due process if the reasoning in Ryan is accepted in this context. In McGrath, this Court stated, and recently reaffirmed in Lankford v. Idaho, No. 88-7247, --- U.S.--- (1991) that:

> "The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." at 171-72 (footnote omitted)

Federal appeals court are either requiring in all circumstances or in circumstances involving "substantial awards" that district court judges

> "state with some specificity the reasons for the imposition of a sanction, and the manner in which the sanction was computed." Brown 830 F.2d at 1438

Unexplained exercise of legal power are not uncommon in the federal courts. Important purposes are served by the requirement that the trial judge make findings. Unexplained decisions are less commanding of trust. The obligation to explain is a restraint on capricious behavior. The findings are the link between the law applied and the recorded evidence. Busy judges may sometimes be tempted to make cryptic findings and to state general conclusions. The inadequacy of the expression of reasons may itself be the occasion for reversal. Carrington & Babcock, Civil Procedure 357 (3rd ed., 1983). See also, Brown, where the appeals court stated:

> "Twice in recent months we have encounted cases in which district judges denied substantial motions for sanctions without giving reasons. Twice we have remanded for more complete consideration (citing cases)" 830 F. 2d at 1438

In Ramey Constr. Co. v. Apache Tribe, 616 F.2d 464 (10th Cir., 1980) where the trial court perfunctorily adopted findings proposed by the defendant and conclusions, the appeals court in reversing for new findings and conclusions, noted, inter alia:

> "...Indeed, the conclusions of law are so conclusory that we are unable to ascertain the legal theories under which the trial court was operating. Complex factual allegations and legal theories are dismissed in a conclusory manner, with no citation of authority. Such conclusions cannot disclose the court 'discerning line for decision.'"

In Cooter & Gell this Court established that the standard for review in Rule 11 cases was an "abuse of discretion". How can the standard be applied if there are no factual or legal determinations expressed by the trial court upon which an appellate court can assess whether the court abused its discretion? Under what circumstances are findings of fact and conclu-

sions of law required where Rule 11 sanctions are being imposed by a district court? Appellate review is meaningless without factual and legal determinations underlying the violations of Rule 11. The amount involved in the controversy has never been used by this Court as a yardstick for determination of the due process rights of parties. Rule 11 has created a burgeoning body of law, dispite the Advisory Committee's plea that litigation not become "satellite litigation". See, Advisory Committee Note, 97 F.R.D. 198, 201 (1983). To avoid prolonging and complicating such Rule 11 satellite litigation, this Court must provide some guidance as to the criteria to be used in evaluating a Rule 11 award. Among those should be that district courts should provide specific findings when awarding compensatory sanctions. This would advance the goal of efficient judicial administration and protect the due process rights of offenders.

To accomplish this, the Writ should be issued by this Court.

II. Involuntary Dismissal Under Rule 12(b)(6)

For over thirty years this Court has held that "a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Haines v. Kerner, 404 U.S. 519 (1972). No opportunity to be heard was accorded the petitioner to offer supporting evidence for the relief sought. The district court made no findings of fact or conclusions of law that could be reviewed by the appellate and this Court, making meaningless the due process rights of the petitioner. The right of access to the federal courts cannot be abused by its judges on grounds of mounting federal caseloads and growing public dissatisfaction with the costs and delays of litiga-

tion or the call for efficiency in the administration of justice. As Justice White of this Court wrote in Zauderer v. Ofc. of Disciplinary Counsel, 471 U.S. 626, 643 (1985):

> "Over the course of centuries, our society has settled upon civil litigation as a means for....vindicating rights when other means fail. There is no cause for consternation when a person who believes in good faith that on the basis accurate information regarding his legal rights that he has suffered a legally cognizable injury turns to the courts for a remedy. 'We cannot accept the notion that it is always better for a person to suffer a wrong silently than to redress it by legal action.'....That our citizens have access to their civil courts is....an attribute of our system of justice in which we ought to take pride."

On a paper record, without benefit of oral argument or an evidentiary hearing or findings of facts or conclusions of law, the district court judge found that the complaint was "manifestly frivolous and malicious", irregardless of the fact that there were contested issues of genuine

fact underlying the various positions of the parties. The lack of findings and legal conclusions on the part of the district court renders meaningless the appellate review. Because this Court in Conley imposed the standard of beyond a reasonable doubt, the district court would be required to justify its dismissal with clear and convincing reasons to avert a reversal on grounds of abuse of discretion. Such a summary disposition forces a losing party to appeal and thereby further increase the caseloads in the appeals courts and this Court. Either in exercise of this Court's supervisory function or because of a lack of due process, the Writ should issue for dismissal was inappropriate.

III. Appellate Review: Jurisdiction and Due Process

A. No Lack of Jurisdiction. At the trial level, the district court consolidated its consideration of the

defendants motion to dismiss under Rule 12(b)(6) and Rule 11 and issued one order granting both motions and setting time limits for further proceedings on the amount of sanctions to be imposed. Plaintiff did not appeal until after the supplemental proceedings for sanctions were completed since the plaintiff did not consider the district court's order on the motions under Rules 12(b)(6) and 11 a final order, there remaining the determination of the amount of the sanction so that the disposition will be complete. An order incomplete as to some material claim, right or liability is subject to revision at any time before the entry of a final order adjudicating all the claims, rights or liabilities of the parties and thus is not final. See, F.R.Civ.P. 54(b) Appeals can be noted only from a final order, within 30 days of its original rendering or reconsideration, if sought. See, 28 U.S.C. Sec. 1291.

Relying upon this Court's ruling in Budinich, the appeals court dismissed the appeal as to the Rule 12(b)(6) dismissal and went on to sua sponte summarily affirm the grant of sanctions under Rule 11. Should the district court's ruling for appeal purposes have been bifurcated since the district court consolidated the Rule 12(b)(6) and Rule 11 motions for disposition? By awaiting the determination of the sanction, then filing an appeal after denial of reconsideration by the district court, the plaintiff avoided two appeals between the same parties with the same questions of law and fact. Rule 11 speaks of "appropriate sanctions" which are meant not to be compensatory, but punative, and is based upon an assessment of the merits of the controversy. Under Rule 12(b)(6) and Rule 11 both require the complete lack of a factual or legal predicate to become operative with the results under Rule 12(b)(6) of dismissal usually

without prejudice to refile and under Rule 11 of "appropriate sanctions" which could include dismissal, attorney fees, costs, disciplinary action, etc. This Court should issue the Writ to clarify its holding in Budinich where there is consolidated or merged consideration of various dispositive motions under the Federal Civil Rules [e.g. Rule 12(b)(6), Rule 11, and Rule 56] with their various remedies to avoid unnecessary appeals in the same action.

B. Summary Affirmance Without Notice. On appeal, the circuit court summarily affirmed sua sponte without notice grant of the Rule 11 sanctions, notwithstanding the due process violations and abuse of discretion by the district court: no oral argument or evidentiary hearing, no factual or legal findings or conclusions, and no equitable considerations in sanctioning. This action by the appeals court violates the due process rights of the

petitioner. Recently, this Court in Lankford , held: "Notice of issues to be resolved by the adversary process is a fundamental characteristic of fair procedure." In a variety of contexts, this Court's "cases have repeatedly emphasized the importance of giving the parties sufficient notice to enable them to identify the issues on which a decision may turn." Id. at n. 22 Without notice, a court "is denied the benefit of the adversary process", "the adversary process is not permitted to function properly, there is an increased chance of error (citing case), and with that, the possibility of an incorrect result." Id. The appeals process is no less a part of the adversary process as the trial, and has two distinct, but related functions: (1) to assure that trial courts have correctly applied the controlling law, substantive and procedural, to reach specific results that are legally correct. This correcting

function is intended to have a preventive or deterrent effect as well. And, (2) to articulate the governing principles i.e. of making the law. The lack of adequate notice that the appeals court was contemplating the affirmance of the Rule 11 grant of sanctions created "an impermissable risk that the adversary process may have malfunctioned in this case" (Id.) and this action should compell the Court to issue the Writ to review the appeals court decision.

Conclusion

At the district and appeals court levels the due process rights under the 14th Amendment of the Constitution of the petitioner were denied. The adjudicatory process was flawed by an inadequate opportunity to be heard in opposition to the dismissal and sanctions motions, by a complete lack of district court findings of fact or conclusions of law, imposition of monetary sanctions with no inquiry into

equitable considerations (amount of assessment or ability to pay), dismissal as untimely by the appeals court of the dismissal portion of the appealed order granting the Rule 12(b)(6) and 11 motions, and summary affirmance by the appeals court of the sanctions imposed without notice or opportunity to be heard.

To avoid an abuse of discretion or due process violation a district court judge must conduct a hearing in order to make factual determinations, the minimum being an evidentiary hearing or oral argument, at some point in the proceedings where a Rule 11 sanction is sought, furthermore, the judge must inquire into the "appropriate sanction", whether that be attorney fees and the like, and determine the appropriate amount in relation to certain equitable considerations, ability to pay, mitigation of losses and the like, and an appeals court must provide notice prior to summarily affirming a lower

court's decision. There is additionally a strong policy reason for according the due process protections cited: reducing satellite litigation on Rule 11 issues and its attendant drain on the judicial recourses of the federal courts.

Circuit appeals courts are unclear as to the requirement for a hearing in Rule 11 cases, stating incorrectly, but relying upon the commentary to the Rule, that due process is related to the amount of monetary sanction imposed, not whether the offender will be denied a proprietary right, which is the appropriate inquiry. Appeals courts are pretty uniform in requiring a hearing and specific findings where the sanctions are large, but would deny both if the sanctions are modest. This confusion should be clarified by the Court. In conformity with it's supervisory function over the interpretation of the Federal Rules of Civil Procedure and protection of the Constitutional rights of

litigants in the courts of this country, the Writ should issue for review of the District of Columbia Court of Appeals ruling in this case.

Respectfully Submitted:

T. CARLTON RICHARDSON, J.D., LL.M.
Petitioner, Pro Se
1505 Pennsylvania Avenue, SE
Washington, D.C. 20003
(202) 347-4466

No.

UNITED STATES SUPREME COURT
October Term, 1990

T. CARLTON RICHARDSON,

Petitioner,

vs.

ROOSEVELT JONES, ET AL.

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS,
DISTRICT OF COLUMBIA CIRCUIT

APPENDIX TO PETITION FOR
WRIT OF CERTIORARI

T. CARLTON RICHARDSON, J.D., LL.M.
Petitioner, Pro Se
1505 Pennsylvania Avenue, SE
Washington, D.C. 20003
(202) 347-4466

INDEX TO APPENDIX

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Opinions Involved Below

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"B"..ORDER, Richardson v. Jones, et al., C.A. No. 89-2694 (D.C.D.C., Harris, J., March 8, 1990)..... A-3

"C"..ORDER, Richardson v. Jones, et al., No. 90-7049 (D.C.Cir., January 11, 1991)..... A-5

"D"..ORDER, Richardson v. Jones, et al., No. 90-7049 (D.C.Cir., March 28, 1991)..... A-8

Text of Provisions Involved

"E"..>14th Amendment, U.S. Constitution..... A-9
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Other Materials

"F"..Complaint, Richardson v. Jones, et al., C.A. No. 89-2694 (D.C.D.C.).... A-13

"G"..Request for Sanctions, Id. A-31

"H"..Defendants' Motion for Sanctions, Id. A-39

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

T. CARLTON RICHARDSON, Plaintiff,	)	
v.	)	Civil Action No. 89-2694 SSH
ROOSEVELT JONES, ET AL. Defendants.	)	

ORDER

This matter is before the Court on defendants' motions to dismiss, the motion by defendants Roosevelt Jones, Perry Jones, Dandar, and Wilson for sanctions, and plaintiff's cross-motion for sanctions. Upon consideration of the motions, the pertinent oppositions thereto, and the entire record herein, it hereby is

ORDERED, that defendants' motions to dismiss are granted. Furthermore, the Court have found that the complaint is both manifestly frivolous and malicious, it hereby further is

ORDERED, that defendant's motion for sanctions is granted. Defendants shall within 14 days of the date of this Order submit their request as to the amount of sanctions to be imposed against plaintiff. Plaintiff shall have 14 days thereafter in which to respond to defendants' request. It hereby further is

ORDERED, that plaintiff's cross-motion for sanctions is denied.

SO ORDERED.

\s\
Stanley S. Harris
United States District Judge

Dated: 31 Jan 1990

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

T. CARLTON RICHARDSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	89-2694 SSH
ROOSEVELT JONES, ET AL.	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on plaintiff's motion for reconsideration of its Order dismissing the complaint and awarding sanctions to the defendants, and defendants' request for sanctions. Upon consideration of the motions and the entire record herein, it hereby is

ORDERED, that plaintiff's motion is denied. It hereby further is

ORDERED, that plaintiff shall pay attorney fees in the amount of $3,775.50 to defendants within 60 days of the date of this Order.

SO ORDERED.

\s\
Stanley S. Harris
United States District Judge

Dated: 8 Mar 1990

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 90-7049 September Term, 1990
C.A. 89-02694

T. Carlton Richardson,

Appellant

v.

Roosevelt Jones, et al.

BEFORE: Wald, Chief Judge; Mikva and Thomas Circuit Judges

O R D E R

Upon consideration of the motion to dismiss, the response thereto, the motion for summary reversal, and the response thereto, it is

ORDERED that the motion to dismiss be granted as to the appeal from the January 31, 1990 order. Richardson's notices of appeal as to the January 31, 1990 order was untimely and that order is not before the court for review. See Moy v. Howard University, 843 F.2d 1504, 1505 (D.C. Cir. 1988); Lepkowski v. United States Department of Treasury, 804 f.2d 1310,

1312 n.2 (D.C. Cir. 1986); Fed. R. App. P. Rule 4(a); see also Cooter & Gell v. Hartmarx Corp., 110 S. Ct. 2447, 2456 (1990); Budinich v. Becton Dickinson & Co., 486 U.S. 196, 202 (1987).

The motion is denied, however, as to the appeal from the March 8, 1990 order. Richardson's April 6, 1990 notice of appeal was timely filed. it is

FURTHER ORDERED that the motion for summary reversal be denied. Richardson's motion for summary reversal challenges only the merits of the underlying January 31, 1990 order which is not before the court. Richardson does not challenge the merits of the district court's order denying reconsideration or the amount of the attorneys' fees granted as sanctions. It is

FURTHER ORDERED, on the court's own motion, that the district court's order of March 8, 1990 be summarily affirmed. The merits of the parties' positions are so

clear as to justify summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). The district court did not abuse its discretion in denying reconsideration and setting the amount of attorneys' fees as a sanction.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 90-7049 September Term, 1990
C.A. 89-02694

T. Carlton Richardson,

Appellant

v.

Roosevelt Jones, et al.

BEFORE: Wald, Chief Judge; Mikva and Thomas Circuit Judges

O R D E R

Upon consideration of appellant's petition for rehearing, filed February 7, 1991, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:
CONSTANCE L. DUPRE, CLERK

BY: \S\

Robert A. Bonner
Deputy Clerk

TEXT OF PROVISIONS INVOLVED

1. 14th Amendment, U.S. Constitution:

"....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of...property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Rule 11, Federal Rules of Civil Procedure:

"Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in

equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for and improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of

this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee."

3. Rule 12(b), Federal Rules of Civil Procedure:

"Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be

granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA CIRCUIT

T. CARLTON RICHARDSON, 1505 Pennsylvania Avenue, SE Washington, D.C. 20005 Plaintiff,	)	
vs.	)	No. 89-2694
ROOSEVELT JONES, Individually and as Personal Representative of the ESTATE OF LEULA KING, DEC'D, 2012-22nd Avenue, Tampa, Florida 33605	)	
PERRY L. JONES, 2012-22nd Avenue Tampa, Florida 33605	)	
HON. F. DENNIS ALVAREZ, Judge, HILLSBOROUGH COUNTY CIRCUIT COURT, PROBATE DIVISION, 801 Twigg Street, Rm. 437 Tampa, Florida 33601	)	
SECOND DISTRICT COURT OF APPEALS, P.O. Box 327 Lakeland, Florida 33802	)	
SUPREME COURT OF FLORIDA, Supreme Court Building Tallahassee, FL 32399-1927	)	
CHARLES R. WILSON, 3101 River Grove Drive Tampa, Florida 33610	)	
KENNAN G. DANDAR, 4830 W. Kennedy Blvd. #447 Tampa, Florida 33609-2517 Defendants	)	

COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF *
(Verified)

Jurisdiction

1. That the jurisidiction of the court lies in 28 U.S.C. Sec. 1331 (Federal Question), Sec. 1332 (Diversity of Citizenship), and Sec. 1343(3) (Civil Rights);

2. That the matter in controversy exceeds, exclusive of interest and costs, the sum of $50,000 (Fifty Thousand Dollars).

Parties

3. That the plaintiff ("Mr. Richardson") is a resident of the District of Columbia;

4. That the defendants, Judge F. Dennis Alvarez ("Judge Alvarez" or "probate court"), Second District Court of Appeals ("2nd DCA") and the Supreme Court are agents or subdivisions of the government of the State of Florida;

---

*--All Exhibits are omitted.

5. That the defendant, Roosevelt Jones, was duly appointed personal representative on February 25, 1985 of the Estate of Leula King, Deceased, (the "Estate") being administered in the Probate Division of the Hillsborough County Circuit Court as case number 84-732, Division A, and is a resident of the State of Florida;

6. That the defendants Perry L. Jones, Charles R. Wilson ("Mr. Wilson") and Kennan G. Dandar ("Mr. Dandar"), are residents of the State of Florida.

Facts

7. That Roosevelt Jones and his wife, Perry L. Jones, executed a Legal Services Agreement with Mr. Richardson, an attorney, for "Estate Planning" services dated March 31, 1983. See, Exhibit "A", page 1: Copy of Agreement, annexed.

8. That Roosevelt Jones executed a Legal Services Agreement with Mr. Richardson re "Estate of Lula King (Real Estate

Title Clearing)" dated March 31, 1983. See, Exhibit "A", page 2: Copy of Agreement, annexed.

9. That invoices were rendered under both Legal Service Agreements and paid from the personal funds of Perry L. Jones in the aggregate amount of $9,462.30 (Nine Thousand Four Hundred and Sixty-Two and 30/100 Dollars), consisting of $6,743.40 (Six Thousand Seven Hundred Forty-Three and 40/100 Dollars) for probate and related services and $2,718.90 (Two Thousand Seven Hundred Eighteen and 90/100 Dollars) for estate planning and general services.

10. That the Mr. Richardson was discharged by the Joneses in July, 1985. The legal services account was fully paid at the time of discharge.

11. That the Joneses secured other counsel, Mr. Wilson and subsequently, Mr. Dandar, who have assisted in completing the administration and settlement of the

Estate which involved, in part: petitioning for sale of the major asset of the Estate (unimproved real estate), filing a final account and petition for discharge and collection activities against Mr. Richardson for refund of alleged overpayment of compensation under his fee contracts with the Joneses.

12. That the final account and petition for discharge filed by the personal representative (Mr. Jones) contained as an entry the fees paid to Mr. Richardson and a request that the probate court allow him to reimburse himself out of Estate funds for those fees paid by his wife to Mr. Richardson.

13. That the final account failed to disclose that the personal representative had received rents from the tenants on the Estate's land nor did Mr. Wilson or Mr. Dandar disclose at the time of filing the petition for discharge that they had an oral contingency fee contract with the

Joneses for a one-third or one-forth commission to collect any overpayment awarded by the probate court to the Estate or the Joneses from Mr. Richardson of compensation he received under the fee contracts.

14. That on February 6, 1986, the probate court (per Judge Alvarez) heard the petition for discharge and opposition thereto, primarily on the fee which the Estate would be obligated to pay Mr. Richardson for services rendered, i.e. how much the personal representative could reimburse himself from the Estate for fees paid Mr. Richardson out of his wife's personal funds. No summons was issued to Mr. Richardson making him a party to probate proceedings only mailing of a notice of the hearing to the Mr. Richardson along with copies of the petition for discharge and final account.

15. That under Florida Statutes the contract of a personal representative for attorney fees is a personal obligation and

not an obligation of an estate whether secured individually or in a representative capacity. See, Fla. Stat. 733.617 and .619 ["...(A) personal representative is not individually liable on a contract, except a contract for attorney fees..."]; Estate of Lieber, 103 So.2d 192, 200 (Fla., 1958)

16. That the probate court entered an order following the February 3rd, 1986 hearing determining that the sum of $2,650.29 (Twenty Six Hundred Fifty and 29/100 Dollars) constituted reasonable compensation to Mr. Richardson for services and costs in representing the Estate and that the Estate was to be responsible for that amount only. See, Exhibit "B": Amended Order on Petition for Discharge (March 18, 1986)

17. That thereafter, the personal representative filed a Motion for Reimbursement of Excessive Attorney's Fees which was heard by the probate court on March

10, 1986. Still no summons had been issued to Mr. Richardson making him a party to the probate proceedings which continues to this date.

18. That as a result of the March 10th, 1986 hearing the probate court entered an order requiring Mr. Richardson to refund the Estate fees paid by or on behalf of the personal representative by his wife (Perry Jones), to the Mr. Richardson above the $2,650.29 the probate court was allowing to be paid from Estate funds. See, Exhibit "C": Order Granting Motion for Reimbursement of Excess Attorney's Fee etc. (March 18, 1986);

19. That an appeal was perfected to the 2nd DCA from the March 18, 1986 order which was affirmed in part and reversed and remanded in part, the appeals court finding that probate court could require refund to an estate of non-estate funds paid an attorney for estate services above

the amount the probate court would allow the estate to pay, but that the probate court miscalculated the payments made to Mr. Richardson which required further proceedings. See, Exhibit "D": Richardson vs. Jones, 508 So.2d 739 (Fla., 2nd DCA, 1987)

20. That on May 29, 1987, the probate court heard evidence regarding the fees paid by the Joneses to the Mr. Richardson out of their personal funds for estate administration and settlement services and entered an order filed of record on September 19, 1988. See, Exhibit "E": Amended Order on Refund of Attorney Fees (Entered September 19, 1988)

21. That, while the order notes "Conformed Copies:...T. CARLTON RICHARDSON, ESQ." no copy was in fact received by the Mr. Richardson from the court or under its direction.

22. That by letter dated November 9th, 1988 the attorney for the Joneses

(Mr. Dandar) demanded payment of the refund order and accompanying final judgment entered by the probate court for $15,670 on September 19, 1988. Although the letter stated that a copy was enclosed, Mr. Richardson received no copy and requested on November 14th, 1988 of the opposing counsel that he would provide a copy, which the opposing counsel did shortly after the November 14th, 1988 request. Exhibit "F": Letter, Dandar to Richardson (11/9/88)

23. That on or about November 16th, 1988, Mr. Richardson received a copy of the order entered by the court on September 19th, 1988 and on or about November 25th, 1988, Mr. Richardson filed a motion to reconsider with the probate court.

24. That the motion to reconsider was heard on February 21st, 1989 and the probate court entered its order denying the motion to reconsider on March 3rd, 1989. At the February 21st hearing uncon-

troverted testimony was received by the probate court that Mr. Richardson had not in fact received a copy of the September 19, 1988 order regarding refunds. See, Exhibit "G": Order on Motions of T. Carlton Richardson (March 3, 1989).

25. That an appeal of this March 3rd, 1989 order was noticed on April 3rd, 1989 to the 2nd DCA. That upon consideration of a motion to dismiss for failure to file a timely appeal, the 2nd DCA dismissed the appeal. See, Exhibit "H": Order (May 8, 1989); and Exhibit "I": Order (June 19, 1989) [Denying petitioner motion to reconsider].

26. That the Supreme Court of Florida on September 15, 1989 denied Mr. Richardson's petition for writ of mandamus to compel the 2nd DCA to reinstate the appeal and to vacate the judgment entered by Judge Alvarez. See, Exhibit "J": Order dated 9/15/89, annexed.

27. That the Estate has sought to

execute on the judgment entered by Judge Alvarez by issuance of a subpoena in aid of execution to Mr. Richardson and commencement of collateral proceeding against the sureties on the appeal bond posted when the first appeal in 1986 was perfected to the 2nd DCA.

28. That the Supreme Court on November 24, 1987 and June 8, 1988 has ordered Mr. Richardson to pay attorney fees to the Estate in the aggregate amount of $1,000 (One Thousand Dollars), $500 (Five Hundred Dollars) each time, for commencing appellate proceedings before the Court which were dismissed related to this matter.

29. That the statutory jurisdiction of the probate court is "in rem" and any judgment which does not affect estate assets is null and void according to Florida law. See, Fla. Stat. 105 ["Probate proceedings are in rem proceedings."]; Spitzer v. Branning, 184

So.2d 770 (Fla., 1938)

30. That Judge Alvarez in entering said judgment included all compensation to Mr. Richardson, whether for estate or non-estate services, where in fact related to the estate and entered the said refund judgment accordingly without allocation between services rendered under the probate fee contract and those under the estate planning or general services fee contract. See, Exhibit "K": Excerpted Testimony of Judge Alvarez in Florida Bar vs. Richardson, Case No. 73,214 (Fla. Sup. Ct., 1988)

31. That Mr. Richardson (1) has a personal judgment rendered against him in the amount of $15,670 plus interest from March 19, 1986 on $7,970 of approximately $3,350 currently owed plus approximately $2.62 per day or $79.70 per month, and the probate court has reserved jurisdiction to impose costs; (2) cannot travel or conduct business in the State of Florida without

being subject to a subpoena; (3) has his assets subject to seizure in payment of said judgment; (4) should he refuse to honor the processes of the Florida court in aid of execution against the said judgment Mr. Richardson could be subject to contempt of court and discipline by the Florida Supreme Court for professional misconduct; and (5) has his credit, professional reputation and other economic interests impaired by the judgment.

Liability

32. That the defendants, jointly and/or severally, have deprived the plaintiffs of valuable property, due process and equal protection rights (a) by entering a personal judgment against the plaintiff without summons according to State law, (b) entering a personal judgment against the plaintiff by a probate court whose "in rem" subject matter jurisdiction does not cover the fee contract and compensation received thereunder between

the plaintiff and defendants Roosevelt and Perry Jones, and (c) denying plaintiff a right to access to the appellate courts of the State on grounds of an untimely appeal where there was an uncontroverted showing of no notice of the entry of the judgment appealed being delivered to the plaintiff; (f) And, additionally, denying the right of access to the courts of general civil jurisdiction wherein the plaintiff would have been entitled to a jury trial and counterclaim which is not permissable in the probate court.

33. That defendants Roosevelt and Perry L. Jones, jointly and/or severally, individually or in concert with their attorneys, Mr. Wilson and Mr. Dandar, have abused the processes of the Florida courts by commencing the illegal proceedings against Mr. Richardson and giving perjured documentary and testimonial evidence before the probate court and other forums.

34. That the defendants Wilson and

Dandar have abused the processes of the Florida court and knew or should have known that the proceedings before the probate court were illegal, that information contained in pleadings filed by them on behalf of their clients, the Joneses, were false and misleading, have failed to disclose as is their professional responsibility an invalid oral contingent fee arrangement with the Joneses and the nature and extent of compensation they have received from the Joneses and the Estate of Leula King and otherwise, jointly, severally or in concert with the defendants Mr. and Mrs. Jones and others unknown to interfere with the economic relations and advantages of the plaintiff.

Relief

Plaintiff request the following relief: (2) that the court determine that the defendants have deprived the plairtiff of due process, equal protection and proprietary rights secured under the U.S.

Constitution and are liable in damages therefor in compensatory damages for loss of and unlawful interference of the plaintiff's right to past, present and future economic interests and advantages in the amount of at least $250,000 (Two Hundred and Fifty Thousand Dollars) and punitive damages in the amount of at least $750,000 (Seven Hundred and Fifty Thousand Dollars); (2) enjoin the defendants from taking any action to enforce, directly or indirectly, or making any use of the judgment entered in September, 1988 against the plaintiff for $15,760; (3) direct the appropriate defendants to expunge the court records of any documents pertaining to the underlying litigation leading up to the entry of said $15,670 judgment and otherwise prohibit the use of such records in any manner whatsoever; and (4) For such further relief as the court deems necessary and proper.

Verification

This certifies, under penalty of perjury, that the factual statements made herein are true to the best of my knowledge and belief.

/s/
T. CARLTON RICHARDSON
1505 Pennsylvania Ave., SE
Washington, D.C. 20003
(202) 347-4466

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA CIRCUIT

T. CARLTON RICHARDSON,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
vs.	)	89-2694
	)	Judge Harris
ROOSEVELT JONES, ET AL.	)	
	)	
Defendants.	)	

REQUEST FOR SANCTIONS

COMES NOW Defendants, by counsel in response to this Honorable Court's Order dated January 31, 1990, and respectfully requests the sum of three thousand seven hundred seventy five dollars and fifty cents ($3,775.50) in the form of a sanction imposed against Plaintiff, in this action.

The sum of three thousand seven hundred seventy five dollars and fifty cents ($3,775.50) represents thirty (30) hours of legal work and expenses incurred in preparing the defense to Plaintiff's complaint.

Counsel for Defendants spent a total of thirty (30) hours defending this action. Counsel's time is charged at one hundred twenty five dollars ($125.00) per hour. 125 x 30 equals $3,750.00. The remaining twenty five dollars and fifty cents ($25.50) represents costs directly incurred by Defendants, such as postage and copying charges. See attached affidavits prepared by counsel.

WHEREFORE, Defendants request that the sum of three thousand seven hundred seventy five dollars and fifty cents ($3,775.50) be awarded to them in the form of sanctions imposed against Plaintiff.

Respectfully submitted,

\s\

JOHN J. SELLINGER, #364072
PAULSON, NACE, NORWIND & SELLINGER
1814 N Street, N.W.
Washington, D.C. 20036-5800
(202) 463-1999

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 1990, a true copy of the foregoing Request for Sanctions was mailed first class, postage prepaid, to T. CARLTON RICHARDSON, Esquire, 1505 Pennsylvania Avenue, S.E., Washington, D.C. 20003.

\s\
JOHN J. SELLINGER

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA CIRCUIT

T. CARLTON RICHARDSON,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
vs.	)	89-2694
	)	Judge Harris
ROOSEVELT JONES, ET AL.	)	
	)	
Defendants.	)	

AFFIDAVIT AS TO ATTORNEY FEES

District of Columbia:

Before me, the undersigned authority, personally appeared JOHN J. SELLINGER, who after being duly sworn on oath deposes and says:

1. The firm of Paulson, Nace, Norwind & Sellinger has expended the following in the defense of this action.

A) Fifteen hours spent in research and preparation of the Motion to Dismiss, Reply Motions and Motions for Sanctions.

B) Twenty dollars for xerox charges and five dollars and fifty cents for postage charges.

2. That a reasonable attorney fee

would be one hundred and twenty five dollars ($125.00) per hour based on the time and labor required, the complexity of the legal issues and the level of skill required to perform these legal services.

I hereby swear and affirm under the penalties of perjury that the foregoing is true and correct to the best of my knowledge.

\s\
John J. Sellinger #364072

City of Arlington
County of Virginia

Sworn and subscribed to before me this 14th day of February, 1990.

\s\
(Carrie L. Wooten)
Notary Public

My Commission Expires: 7/16/91

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA CIRCUIT

T. CARLTON RICHARDSON, Plaintiff,	)	
vs.	)	Civil Action No. 89-2694
ROOSEVELT JONES, ET AL.	)	Judge Harris
Defendants.	)	

AFFIDAVIT AS TO ATTORNEY FEES

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared KENNAN GEORGE DANDAR, who, after being duly sown on oath, deposes and says:

1. That he is an attorney at law admitted to practice in the State of Florida and has been practicing law for approximately eleven (11) years.

2. That he is aware of and knowledgeable of the reasonable attorney fees for handling cases involving the subject litigation.

3. That he has been called upon to express an opinion as to what would

constitute a reasonable attorney fee for the services rendered by Defendants' attorney at the firm of DANDAR & DANDAR, P.A., in this cause.

4. That he has reviewed and examined the office file of the Defendants' counsel in this cause and has considered the following factors:

a. The time and labor required.

b. The novelty and difficulty of the legal and factual questions.

c. The skill requisite to perform the legal service property.

d. The exclusion of other employment by the attorney due to the acceptance of the case.

e. The customary fees of the Bar and the fees awarded by the courts for similar services.

f. The contingency or the certainty of the compensation.

g. The time and preparation for the trials.

h. The time limitations imposed by the client or the circumstances.

i. The amount involved and the results obtained.

j. The experience, reputation and ability of the attorney.

k. The nature and the length of the professional relationship with the client.

5. Based on the foregoing, it is his opinion that the amount of hours, i.e., 15 hours, is reasonable and that a reasonable attorney fee to be awarded for the services rendered by Defendants' counsel, DANDAR & DANDAR, P.A., at Tampa, Florida, should be in the amount of $125.00 per hour for a total of $1,875.00.

\s\
KENNAN GEORGE DANDAR, ESQ.

SWORN TO AND SUBSCRIBED before me
this 13th day of February, 1990.

\s\
(Donna M. West)
NOTARY PUBLIC
My commission expires: 10/31/91

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA CIRCUIT

T. CARLTON RICHARDSON, Plaintiff,	)	
vs.	)	Case No.89-2694 Judge Harris
ROOSEVELT JONES, ET AL. Defendants.	)	

DEFENDANTS' MOTION FOR SANCTIONS

Comes now the Defendants, ROOSEVELT JONES, PERRY JONES, KENNAN GEORGE DANDAR, and THE HONORABLE CHARLES H. WILSON, by and through their undersigned attorneys and hereby move for appropriate sanctions pursuant to Rule 11, Federal Rules of Civil Procedure. As grounds therefore, the Defendants state the following:

1. That the complaint filed by the Plaintiff, T. CARLTON RICHARDSON, against the Defendants, ROOSEVELT JONES, PERRY JONES, KENNAN GEORGE DANDAR, and THE HONORABLE CHARLES H. WILSON, is totally without merit, filed in bad faith and

entirely frivolous.

2. That Plaintiff, an attorney, holds himself out as a scholar, the dean of a prestigious law school, and an expert in probate matters.

3. That Plaintiff knows or has reason to know this instant action is without merit as he has filed numerous appeals on the same cause of action before the Second District Court of Appeals in Florida, as well as before the Florida Supreme Court, all of which have been dismissed. In fact, the Second District Court of Appeal stated that his arguments were without merit.

4. Plaintiff does not now allege a new cause of action in this Federal Court, instead he, in bad faith, attempts to relitigate the issues, causing each and every defendant embarrassment and forcing them to incur attorney fees in defending this frivolous claim.

5. That the Court has the inherent power

to levy sanctions in response to abusive litigation practices is well-acknowledged. Readway Express, Inc. v. Piper, 447 U.S. 752,765 (1980) (citing Ling v. Wabash R. Co., 370 U.S. 626,632 (1962)).

6. That in accordance with Rule 11 of the Federal Rules of Civil Procedure an appropriate sanction for the willful filing of a pleading not warranted by law solely for the improper purpose of harassment is:

> ... an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fees...

7. The Court in American Automobile Association, Inc. et al v. Rothman, 104 F. Supp 655, 666 (1952), held that "one of the obvious purposes of Rule 11 is to keep out of a case issues that are known to be false by the attorney who signs a given

pleading,...". In this case, as in American Automobile Association, Inc., supra, the Plaintiff attorney who signed the pleadings knew the Court should not adjudicate the issues he raised by filing.

WHEREFORE, the Defendants, ROOSEVELT JONES, PERRY JONES, KENNAN GEORGE DANDAR and THE HONORABLE CHARLES H. WILSON, respectfully request that this court consider and enter appropriate sanctions, pursuant to Rule 11, Federal Rules of Civil Procedure, including an award for costs and attorney fees.

Respectfully Submitted,

PAULSON, NACE, NORWIND & SELLINGER

BY: \s\
JOHN J. SELLINGER, ESQUIRE
1814 N Street, N.W.
Washington, D.C. 20036-5800
(202) 463-1999
Co-Counsel for Defendants

\s\
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DANDAR & DANDAR, P.A.
One Urban Centre, Suite 447

4830 West Kennedy Boulevard
Tampa, Florida 33609-2517
(813) 289-3858
Co-Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Sanctions and the proposed Order were mailed, postage prepaid, this 15th day of November, 1989, to T. CARLTON RICHARDSON, 1505 Pennsylvania Avenue, S.E., Washington, D.C. 20003.

\s\
JOHN J. SELLINGER

SUPREME COURT, U.S.
FILED
JUL 25 1991
OFFICE OF THE CLERK

(2)

No. 90-1950

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

T. CARLTON RICHARDSON,
Petitioner,

v.

ROOSEVELT JONES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION OF RESPONDENTS ROOSEVELT JONES, ESTATE OF LEULA KING, PERRY L. JONES, KENNAN G. DANDAR, AND CHARLES R. WILSON

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* Counsel of Record

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

T. CARLTON RICHARDSON,
Petitioner,

v.

ROOSEVELT JONES, ET AL.,
Respondents.

BRIEF IN OPPOSITION OF RESPONDENTS ROOSEVELT JONES, ESTATE OF LEULA KING, PERRY L. JONES, KENNAN G. DANDAR, AND CHARLES R. WILSON

AMENDMENT TO PETITIONER'S STATEMENT OF THE CASE

Petitioner, an attorney proceeding *pro se*, is seeking a Writ of Certiorari to review the January 11, 1991 decision of the United States Court of Appeals for the District of Columbia Circuit summarily affirming the United States District Court of the District of Columbia's imposition of sanctions upon Petitioner pursuant to Federal Rule of Civil Procedure 11. *See* Appendix of Petitioner's Petition for Writ of Certiorari (hereinafter Petition for Writ) at A-5. In its January 11, 1991 decision, the Court of Appeals dismissed as untimely Petitioner's underlying appeal addressing the merits of the District Court's January 31, 1990 Order of dismissal. *See* Appendix of Petition for Writ at A-1. Thus, while Petitioner seeks to raise constitutional issues relating to the imposition of sanctions where there has been no oral argument, there is no justiciable issue for this Court to consider. Because Petitioner filed his appeal untimely, the issue was not preserved for review by this Court.

In the underlying civil action, Petitioner filed a Complaint in which he sought to have the United States District Court for the District of Columbia review the Florida state court probate

proceedings wherein the probate court had ordered Petitioner to refund to his client funds which he was found to have overcharged the client for handling a probate matter. On May 8, 1989, as was later done in the U.S. Court of Appeals for the District of Columbia, Petitioner's appeal of the ultimate order in the Florida case was dismissed by the Florida appellate court as untimely. This fact was disclosed in Paragraph 25 of the Complaint filed in the U.S. District Court for the District of Columbia. *See* Appendix of Petition for Writ at A-23. In the Complaint filed in the District Court, there is not one allegation of personal jurisdiction under the District of Columbia "long arm statute" over the Defendants, all of whom were Florida residents. In the course of the proceedings in the District Court, Petitioner never suggested any basis for that court to exercise personal jurisdiction over the Florida defendants. Even in his Petition for Writ of Certiorari to this court, Petitioner has not suggested any error in the conclusion that the lower court did not have personal jurisdiction over these Florida residents. This fact was manifest at the time of the filing of the original Complaint.

Although Petitioner seeks to have this Court examine the issue of his entitlement to an oral hearing on a Rule 11 motion for sanctions, it should be noted that Petitioner did not request a hearing on the Motion for Sanctions or the underlying Motion to Dismiss as he could have done pursuant to Rule 108(f) of the Local Rules of the United States District Court for the District of Columbia. On or about February 27, 1990, Petitioner made his only request for an oral hearing in the lower court, which was made in relation to his Motion for Reconsideration and which came *after* the Motion to Dismiss and Motion for Sanctions had already been granted. Pursuant to Rule 108, the allowance of a hearing on the Motion for Reconsideration was "within the discretion of the court."

REQUEST FOR DAMAGES AND COSTS UNDER RULE 42.2

Pursuant to Rule 15 of the Rules of this Court, Respondents are obligated to file a Brief in Opposition to the Petition for Writ of Certiorari in order to assist this Court in its decision on the Petition. Pursuant to Rule 42.2, when a petition for writ of certiorari is frivolous, this Court may award the respondent just damages and single or double costs.

While it is doubtless that the occasion is rare when Rule 42.2 damages are awarded, an award of damages and costs in this case is particularly appropriate. It is clear on the face of the petition that this petition is frivolous, particularly in view of the fact that the very appeal to the United States Court of Appeals, which Petitioner seeks to have reviewed, was dismissed as untimely filed. Consider also that Petitioner's appeal to the intermediate court of appeals in Florida was dismissed as untimely, and that Petitioner then brought an action in the United States District Court for the District of Columbia to have that court review the Florida probate proceedings. The filing of that Complaint resulted in the imposition of sanctions, about which Petitioner now complains. The entire history of this case is a classic example of abuse of the system of civil justice, and Petitioner should again be severely sanctioned for his conduct in pursuing frivolous litigation and frivolous appeals, all designed to avoid the payment of his just debt to his former Florida clients.

Regardless of the lack of merit of the Petition for Writ of Certiorari, Respondents have been put to the expense of responding to the Petition. They have incurred substantial expense for attorney's fees and for the cost of printing this Opposition. In denying the Petition for Writ of Certiorari, this Court should also assess both damages and costs pursuant to Rule 42.2.

SUMMARY OF THE ARGUMENT

First, Petitioner's appeal to the United States Court of Appeals for the District of Columbia Circuit of the January 31, 1990 Order of the District Court was dismissed as untimely. Since the Court of Appeals never passed upon the merits of the appeal, Petitioner may not now seek review in this Court of these underlying issues.

Second, the Complaint filed by petitioner is manifestly frivolous in that it is an attempt to review Florida state probate court proceedings. The lack of personal jurisdiction over the Florida Respondents is apparent on the face of the Complaint.

Finally, Petitioner was not only given an opportunity to be

heard, but he was in fact heard concerning the imposition of Rule 11 sanctions upon him.

REASONS FOR DENYING THE WRIT

1. The Issues Which Petitioner Seeks To Raise Were Not Preserved For Review By This Court.

As noted above, Petitioner failed to timely note his appeal from the District Court's Order of January 31, 1990, and the appeal with respect to this order was dismissed by the Court of Appeals for that reason. With respect to Federal Rule of Appellate Procedure 4(a), which provides that a notice of appeal must be filed within 30 days of entry of judgment or order from which the appeal is taken, this Court has held on numerous occasions that the 30-day time limit is "mandatory and jurisdictional." *Browder v. Director, Dep't of Corrections of Illinois*, 434 U.S. 257, 264 (1978) (citations omitted).

Hence, in the case *sub judice*, the Court of Appeals never passed upon the merits of the appeal with respect to the failure to permit Petitioner to have an oral hearing on the Motion for Sanctions. The only issue which could be properly before this Court is whether the Court of Appeals erred in dismissing the appeal as untimely. Having failed to timely perfect his appeal to the United States Court of Appeals, which is a jurisdictional defect, Petitioner may not now seek review in this Court of the underlying issue.

2. Lack of Personal Jurisdiction Is Apparent On The Face of The Complaint.

The Complaint that Petitioner filed in the District Court shows on its face that (i) it is an attempt to review probate proceedings of the state of Florida, and (ii) there is not the slightest connection between the District of Columbia and any of the named defendants, nor is there any attempt to show any involvement of any person or any proceeding with the District of Columbia. Consequently, lack of personal jurisdiction was apparent, and on that basis alone the courts below were justified in dismissing the Complaint.

3. Petitioner's Arguments Are Devoid Of Merit.

A. Notice And An Opportunity To Respond To Respondents' Motion For Sanctions Were Afforded To Petitioner.

Although it is generally agreed that the due process clause of the United States Constitution applies to the procedures for imposing sanctions pursuant to Rule 11, the rule itself does not detail what procedural steps should be observed. *See* Fed. R. Civ. P. 11 Advisory Committee Note, 97 F.R.D. 198, 201 (1983). While notice and an opportunity to be heard are fundamental to the notion of due process, "[t]he particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration." *Id.* The Advisory Committee Note to Rule 11 further states:

> In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.
>
> To assure that the efficiencies achieved through more effective operation of the pleading regimen will not be offset by the cost of satellite litigation over the imposition of sanctions, the court must to the extent possible limit the scope of sanction proceedings to the record.

Id.

In his Petition for Writ of Certiorari, Petitioner does not contend that he did not receive proper notice that sanctions were being sought in the District Court. Petitioner's argument is only that, despite having filed an Opposition to the Motion for Sanctions and a Motion for Reconsideration and despite his failure to request an oral hearing, he was denied his right to an opportunity to be heard.

The notion that an attorney subject to sanctions is necessarily entitled to an oral hearing has been consistently rejected by the circuit courts. *Braley v. Campbell*, 832 F.2d 1504, 1515 (10th Cir. 1987) (en banc) (28 U.S.C. § 1927 and Fed. R. App. P. 38) ("an

opportunity to file a brief or otherwise be heard" satisfies due process; for *sua sponte* sanctions, an order to show cause and "a reasonable opportunity for filing a response" suffices; an adversarial, evidentiary hearing is not required; "at the trial court level, the sanction inquiry may properly be limited to the record in most circumstances"); *Donaldson v. Clark*, 819 F.2d 1551, 1560 (11th Cir. 1987) (en banc) (Rule 11) ("The accused must be given an opportunity to respond, orally or in writing as may be appropriate, to the invocation of Rule 11 and to justify his or her actions"); *Oliveri v. Thompson*, 803 F.2d 1265, 1280 (2d Cir. 1986), *cert. denied*, 480 U.S. 918 (1987) (Rule 11) (due process does not mean, necessarily, that an evidentiary hearing must be held; at a minimum, however, notice and an opportunity to be heard is required); *Brown v. National Bd. of Medical Examiners*, 800 F.2d 168 (7th Cir. 1986); *Roberts v. Ace Hardware, Inc.*, 779 F.2d 52 (6th Cir. 1985) (cited in *Donaldson*, 819 F.2d at 1560 n.12) (Rule 11 does not require a hearing before imposition of sanctions; because the attorney had filed a response to the Rule 11 motion and it was clear from the documents before the court that post-judgment motions had no merit, no further hearing was necessary); *Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 205-06 (7th Cir. 1986); *Davis v. Veslan Enters.*, 765 F.2d 494, 496 & 500 n.12 (5th Cir. 1985).

As the *Donaldson* court noted:

> Assertions of Rule 11 violations are often made in connection with a Rule 12(b)(6) motion to dismiss or a Rule 56 motion for summary judgment. The court frequently may be able to evaluate the Rule 11 issue in the course of examining and ruling on the factual and legal merits of a motion to dismiss or for summary judgment without any further proceedings.

819 F.2d at 1561 n.13.

This Court has admonished that "[a] request for attorney's fees should not result in a second major litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). "[M]andating extensive collateral procedures as prerequisites to the imposition of [Rule 11] sanctions" would be "counterproductive." *Donaldson*, 819 F.2d at 1559. Mandatory oral hearings would be incompatible with the

primary objectives of Rule 11, which are "to rid the courts of meritless litigation and to reduce the growing cost and burdensomeness of civil litigation." *Id.*; *see Business Guides v. Chromatic Comm. Enters.*, --- U.S. --- (1991) (slip op. at 19) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. ---, 110 S. Ct. 2447, 2454 (1990)) ("the central purpose of Rule 11 is to deter baseless filings in District Court and thus . . . streamline the administration and procedure of the federal courts").

Contrary to Petitioner's suggestion, the due process requirement of an opportunity to be heard does not translate into a mandatory oral hearing, as Petitioner seeks. Rather, the courts have employed a case-by-case method of balancing to determine how much of an opportunity to be heard should be provided. "No set rule can be stated to govern all Rule 11 cases; the standard is necessarily flexible to cover varying situations." *Donaldson*, 819 F.2d at 1558. Relevant factors to be considered include "the interests of attorneys and parties in having a specified sanction imposed only when justified; the risk of an erroneous imposition of sanctions under the procedures used and the probable value of additional notice and hearing; and the interests of the court in efficiently monitoring the use of the judicial system and the fiscal and administrative burdens that additional procedural requirements would entail." *Id.* (citing *Matthews v. Eldridge*, 424 U.S. 319 (1976)). Following an assessment of these factors, the district court is best situated to determine the manner in which the requirement of "an opportunity to be heard" is appropriately satisfied. So long as the sanctioned attorney has notice and some opportunity, either orally or in writing, to explain the questionable conduct to the court, then the minimum due process safeguards are met. *Donaldson*, 819 F.2d at 1560.

In the case *sub judice*, Petitioner was entitled pursuant to Rule 108 of the local rules of the United States District Court to request that the District Court conduct an oral hearing on the matter of the imposition of sanctions. Despite this opportunity to request an oral hearing, Petitioner made no such request. In spite of his failure to request an oral hearing pursuant to the Rules, Petitioner is now suggesting that this Court must provide for that which Petitioner himself failed to even request from the District Court. Petitioner should not be permitted to complain that he was denied his due process right of an opportunity to be heard when Petitioner did not assert his right to request an oral hearing at the District Court level.

More importantly, Petitioner was not only given the opportunity to be heard, but he was in fact heard. He filed an Opposition to the motion for sanctions. Petitioner's opposition was duly considered by the District Court before imposing sanctions upon Petitioner. Furthermore, after the Motion for Sanctions was granted, Petitioner filed a Motion for Reconsideration. The Seventh Circuit has held that such a motion for reconsideration satisfies the due process requirement of an opportunity to be heard. *Brown*, 800 F.2d at 173; *Rodgers*, 771 F.2d at 205-06.

B. The District Court Found That Petitioner's Complaint Was "Manifestly Frivolous and Malicious."

As Petitioner has observed, "[t]here is no expressed [sic] requirement in the Federal Rules of Civil Procedure that the sanctioning court make findings of fact or conclusions of law." Petition for Writ at 23. Indeed, Federal Rule of Civil Procedure 52(a) states in relevant part that "findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule," which deals with non-jury trials. Additionally, the case law provides that specific findings of fact are not necessarily required. *See United States ex rel. Wiltec Guam v. Kahaluu Constr. Co.*, 857 F.2d 600, 603 (9th Cir. 1988); *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 883 (5th Cir. 1988) (en banc) (rejecting earlier Fifth circuit rule requiring explicit findings in all sanctions awards because it would "impose upon district courts [an] onerous and often time-consuming burden"); *Szabo Food Servs., Inc. v. Canteen Corp.*, 823 F.2d 1073, 1084 (7th Cir. 1987). *See also Toombs v. Leone*, 777 F.2d 465, 472 (9th Cir. 1985) (28 U.S.C. § 1927).

Notwithstanding the lack of a requirement for fact finding, the District Court in this action "found that the [Petitioner's] complaint is both manifestly frivolous and malicious." Order, *Richardson v. Jones*, No. 89-2694 (D.D.C. Jan. 31, 1990). The District Court made this finding based on "[Respondents'] motion to dismiss, the motion by [Respondents] Roosevelt Jones, Perry Jones, Dandar, and Wilson for sanctions, and [Petitioner's] crossmotion for sanctions[,] . . . the pertinent oppositions thereto, and the entire record." *Id.* Pursuant to the District Court's finding that the Petitioner's complaint was manifestly frivolous and malicious in

violation of Rule 11, the court granted Respondents' motion for sanctions.

In its order denying Petitioner's motion for reconsideration, the District Court again expressed its reasons for imposing sanctions on Petitioner. Order, *Richardson v. Jones*, No. 89-2694 (D.D.C. March 8, 1990). *See* Appendix of Petition for Writ at A-3. The court declared that based on "[Petitioner's] motion for reconsideration of [the court's] Order dismissing the complaint and awarding sanctions to the [Respondents], and [Respondents'] request for sanctions[,] . . . and the entire record." Petitioner's motion for reconsideration was denied and Petitioner was ordered to pay sanctions. Thus, contrary to Petitioner's contentions, the District Court did offer substantial justification for the imposition of sanctions upon Petitioner.

Petitioner suggests that the lack of reasoning expressed by the District Court renders any appellate review meaningless. Petition for Writ at 28. The standard for review employed by an appellate court in reviewing a district court's imposition of sanctions pursuant to Rule 11 is whether the district court committed an abuse of discretion. *Cooter & Gell*, 110 S. Ct. at 2461.

In *Cooter & Gell*, this Court noted that Rule 11's policy goals support the abuse-of-discretion standard:

> The district court is best acquainted with the local bar's litigation practices and thus best situated to determine when a sanction is warranted to serve Rule 11's goal of specific and general deterrence. Deference to the determination of courts on the front lines of litigation will enhance these courts' ability to control the litigants before them. Such deference will streamline the litigation process by freeing appellate courts from the duty of reweighing evidence and reconsidering facts already weighed and considered by the district court; it will also discourage litigants from pursuing marginal appeals, thus reducing the amount of satellite litigation.

Id. at 2460.

Under the abuse of discretion standard, "an appellate court would be justified in concluding that the district court abused its discretion in making a factual finding only if the finding were clearly erroneous." *Id.* at 2458. In other words, an appellate court must uphold "any district court determination that falls within a broad range of permissible conclusions." *Id.* (citations omitted).

In the present case, the United States Court of Appeals for the District of Columbia Circuit held that there was no abuse of discretion committed by the District Court in denying reconsideration and in imposing sanctions. Order, *Richardson v. Jones*, No. 90-7049 (D.C. Cir. Jan. 11, 1991) (per curiam). In arriving at this decision, the Court of Appeals had before it the record as well as Respondents' motion to dismiss, Petitioner's motion for summary reversal, and the responses thereto. *Id.* The Court of Appeals not only obviously agreed that the reasoning expressed by the District Court was sufficient, but it further declared that "[t]he merits of the parties' positions are so clear as to justify summary action." *Id.* (citations omitted). Thus, the Court of Appeals, on its own motion, ordered that the District Court's order of March 8, 1990, denying reconsideration and imposing sanctions, be summarily affirmed. *Id.*

C. Petitioner's Suggestion That The District Court Should Have Considered "Equitable Considerations" Before Imposing Sanctions Is Not Appropriate For Review In This Case.

As discussed above, Petitioner had ample opportunity to be heard regarding the imposition of sanctions. And, as noted above, Petitioner was in fact heard. It was in this forum that Petitioner could and should have raised any "equitable considerations" that he may have been aware of regarding the "appropriate sanction." Petition for Writ at 37.

However, Petitioner failed to present these contentions to the District Court in this case. In addition to preventing the prompt and proper resolution of these issues, Petitioner's failure also precludes this Court from receiving the benefits of the lower courts' consideration of the issues. To allow Petitioner to raise these issues at this late stage would send a signal that, whether for tactical reasons or otherwise, parties may avoid bringing such questions to the district court's attention and press them for the first time on appeal in order

to gain automatic reversal of adverse decisions. This Court should not entertain these issues under such circumstances. *See FTC v. Grolier, Inc.*, 462 U.S. 19, 23 n.6 (1983); *United States v. Lovasco*, 431 U.S. 783, 788 n.7 (1977); *Tennessee v. Dunlap*, 426 U.S. 312, 316 n.3 (1976).

D. The Court Of Appeals Properly Dismissed As Untimely The Appeal Of The District Court's January 31, 1990 Order.

Petitioner admits that he missed the deadline for noting an appeal of the District Court's January 31, 1990 Order because he "did not consider the district court's order on the motions under Rules 12(b)(6) and 11 a final order." Petition for Writ at 32. However, the time for noting appeals is not controlled by the mistaken belief of parties, but rather by the rules of court and relevant case law. The Court of Appeals ruled that Petitioner's "notice of appeal as to the January 31, 1990 order was untimely and that order is not before the court for review." Order, *Richardson v. Jones*, No. 90-7049 (D.C. Cir. Jan. 11, 1991) (per curiam) (citing *Cooter & Gell*, 110 S. Ct. at 2456; *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 202 (1987); *Moy v. Howard Univ.*, 843 F.2d 1504, 1505 (D.C. Cir. 1988); *Lepkowski v. United States Dep't of Treasury*, 804 F.2d 1310, 1312 n.2 (D.C. Cir. 1986); Fed. R. App. P. Rule 4(a)). Petitioner's claims that he should be afforded relief are clearly unjustified and contrary to law.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied. Furthermore, pursuant to Supreme Court Rule 42.2, Respondents should be awarded damages and costs incurred due to the filing of this frivolous Petition.

Respectfully submitted,

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